IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

RUSSELL BLAIR, Plaintiff, vs. JEREMY HARRIS, in his individual capacity and as Mayor of the City and County of Honolulu, Defendants.	)))) Civil No. 02-1-0008-1 (SSM))))))))) ORDER GRANTING PLAINTIFF'S) MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT JEREMY HARRIS'S MOTION FOR JUDGMENT ON THE PLEADINGS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT; NOTICE OF ENTRY Hearing: March 11, 2002 Judge: Sabrina S. McKenna

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT JEREMY HARRIS'S MOTION FOR JUDGMENT ON THE PLEADINGS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

These motions were heard before Judge Sabrina S. McKenna on March 11, 2002. WILLIAM J. DEELEY, ESQ. appeared with Plaintiff RUSSELL BLAIR ("PLAINTIFF"). ROBERT G. KLEIN, ESQ., and PETER J. HAMASAKI, ESQ., appeared for Defendant JEREMY HARRIS in his individual capacity ("Defendant HARRIS"). DIANE KAWAUCHI, ESQ., appeared for Defendant JEREMY HARRIS in his official capacity as Mayor of the City and County of Honolulu ("Defendant MAYOR").

I. BACKGROUND

A. THE MOTIONS

There are two motions before the court, one filed by PLAINTIFF and one filed by Defendant HARRIS.

PLAINTIFF's motion, filed January 29, 2002, seeks partial summary judgment pursuant to Rule 56 of the Hawaii Rules of Civil Procedure ("HRCP"), with respect to PLAINTIFF's prayer for a declaratory judgment pursuant to Chapter 632 of the Hawaii Revised Statutes, declaring that HARRIS violated Article II, Section 7 of The Constitution of the State of Hawaii ("Hawaii Constitution") and was required to resign as Mayor of the City and County of Honolulu when HARRIS became eligible as a candidate for the office of Governor of the State of Hawaii on or before the filing of his Organizational Report on May 15, 2001.

Defendant HARRIS's motion, filed February 13, 2002, seeks an order pursuant to Rule 12(b)(6) of the HRCP dismissing PLAINTIFF's Complaint, filed on January 3, 2002, on the grounds that it fails to state a claim upon which relief can be granted. In the alternative, it seeks summary judgment dismissing PLAINTIFF's Complaint.

B. THE ISSUE BEFORE THE COURT

In essence, both motions boil down to an interpretation of Article II, Section 7 of the Hawaii State Constitution, proposed by the Constitutional Convention of 1978 ("1978 Con Con") and ratified by the voters of the State of Hawaii in the November 1978 election. Article II, Section 7 provides:

> Any elected public officer shall resign from that office before being eligible as a candidate for another public office, if the term of the office

sought begins before the end of the term of the office held.

The question presented is thus: what event triggers the resignation requirement of Article II, Section 7? Is it by the time a person files an Organizational Report with the Campaign Spending Commission, as argued by PLAINTIFF, or at the time a person files official nomination papers, as argued by HARRIS?

C. THE FACTS

The following relevant facts are indisputable, whether through judicial admissions, or through the court taking judicial notice.[1] HARRIS is the current MAYOR of the City and County of Honolulu. On April 18, 2001, ninety-eight days after beginning his term of office as MAYOR, HARRIS announced his intention to run for the office of Governor of the State of Hawaii. One month later, on May 15, 2001, HARRIS filed a gubernatorial campaign organization report with the Campaign Spending Commission. HARRIS's candidate committee has raised more than $100,000 in support of his gubernatorial candidacy. The term of HARRIS's current office overlaps with the term of the public office he seeks. HARRIS has not resigned as MAYOR while running for Governor.

II. ANALYSIS

A. AVAILABILITY OF DECLARATORY JUDGMENT

[1] Pursuant to Rule 201 of the Hawaii Rules of Evidence, Hawaii Revised Statutes §626-201, a court may take judicial notice, whether requested or not, of a fact not subject to reasonable dispute, in that it is either (1) generally known within the jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

PLAINTIFF seeks partial summary judgment, requesting that this court issue a declaratory judgment declaring that HARRIS violated Article II, Section 7 of the Hawaii State Constitution and was required to resign as Mayor of the City and County of Honolulu when he became eligible as a candidate for the office of Governor of the State of Hawaii on before the filing of his Organizational Report on May 15, 2001.

Requests for declaratory judgments are governed by Section 632-1 of the Hawaii Revised Statutes, which provides:

> In cases of actual controversy, courts of record, within the scope of their respective jurisdictions, shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed, and no action or proceeding shall be open to objection on the ground that a judgment or order merely declaratory of right is prayed for. . . .
>
> Relief by declaratory judgment may be granted in civil cases where an actual controversy exists between contending parties, or where the court is satisfied that antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation, or where in any such case the court is satisfied that a party asserts a legal relation, status, right, or privilege in which the party has a concrete interest and that there is a challenge or denial of the asserted relation, status, right, or privilege by an adversary party who also has or asserts a concrete interest therein, and the court is satisfied also that a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding. . . .

Thus, declaratory relief is available, if warranted, for the issue presented in this case.

B. THE HAWAII SUPREME COURT IS THE ARBITER OF THE MEANING OF THE HAWAII CONSTITUTION

The Supreme Court of the State of Hawaii ("Hawaii Supreme Court") is the final

arbiter of the meaning of the provisions of the Hawaii Constitution. Del Rio v. Crake, 87 Haw. 297, 304, 599 P.2d 90 (1998).

> Our national experience teaches that the Constitution is preserved best when each part of the government respects both the Constitution and the proper actions and determinations of the other branches. When the Court has interpreted the Constitution, it has acted within the province of the Judicial Branch, which embraces the duty to say what the law is. Marbury v. Madison, 1 Cranch 137, 5 U.S. 137, 2 L.Ed. 60 (1803), cited with approval in Del Rio v. Crake, 87 Haw. 297, 304, 599 P.2d 90 (1998).

The Hawaii Supreme Court has not specifically addressed the issue presented in this case. Then Circuit Court Judge and current Hawaii Supreme Court Associate Justice Simeon Acoba did agree with HARRIS's interpretation of the deadline for resignation in the 1987 cases regarding then City Councilmember Marilyn Bornhorst's candidacy for Mayor.[2] It appears, however, that the record presented in that case was not complete. In addition, it is generally held that unpublished opinions of trial courts have no precedential value. See Chun v. Board of Trustees of the Employees' Retirement System, 92 Haw. 432, 446, 992 P.2d 127 (2000).

HARRIS also points out that the Hawaii Supreme Court, when presented with the appeal in the Bornhorst cases, declined to rule, taking "judicial notice of the fact that the respondent has resigned from the City Council in order to run as a candidate for mayor of the City and County of Honolulu at this time. Accordingly, the appeal is dismissed as moot."[3]

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[2] In the Matter of the Application of Arthur Batey for an Order of Quo Warranto Against Marilyn Bornhorst, S.P. No. 87-0448, Circuit Court of the First Circuit, State of Hawaii, and In the Matter of the Application of Richard Labez for an Order of Quo Warranto Against Marilyn Bornhornst, S.P. No. 87-0452, Circuit Court of the First Circuit, State of Hawaii.

[3] Order Dismissing Appeal, dated August 23, 1988, No. 12876 in the Supreme Court of the State of Hawaii.

HARRIS argues that based on the well-recognized exception to the mootness doctrine for questions affecting the public interest, and likely to arise in the future,[4] the fact that the Hawaii Supreme Court declined to decide the Bornhorst cases on the merits suggests that it agreed with Judge Acoba's reasoning. Fundamentally, however, a dismissal of an appeal on mootness grounds is not a decision on the merits.

In addition, HARRIS argues that the Hawaii Supreme Court's decision to deny PLAINTIFF's previous Petition For Writ of Mandamus against HARRIS and others is also suggestive of the Court's position on this matter.[5] As pointed out by the Hawaii Supreme Court in its Order Denying Petition For Writ of Mandamus, however, "a writ of mandamus will not issue unless the petitioner demonstrates a clear and indisputable right to relief and a lack of alternative means to redress the alleged wrong or obtain the requested action.[6] It is established that a writ of mandamus is an extraordinary remedy and also will not issue where a petitioner has alternative means to seek review, such as through this case before this court.

The court is also aware that in Cobb v. State,[7] a case of original jurisdiction dealing with whether the "resign to run" provision applies to a candidate for federal office, the Hawaii Supreme Court ruled upon an "Agreed Statement of Facts" that indicated Cobb's intention to file nomination papers on July 22, 1986, the deadline for filing nomination of papers.

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[4] See, e.g., Carl Corp. v. State of Hawaii, Department of Education, 93 Haw. 155,165, 997 P.2d 567 (2000).

[5] See Order Denying Petition For Writ of Mandamus dated December 5, 2001, in Blair v. Harris, No. 24689 before the Supreme Court of the State of Hawaii.

[6] Citing, Barnett v. Broderick, 84 Haw. 109. 929 P.2d 1359 (1996).

[7] 68 Haw. 564 (1986).

In determining that the "resign to run" amendment did not apply to a person seeking federal office, the Hawaii Supreme Court did not question the deadline presented by the parties. In that case, however, the parties had stipulated through the "Agreed Statement of Facts" that the deadline for resignation was the deadline for filing of nomination papers, and did not reference when Cobb had actually became a candidate through any of the events alleged by PLAINTIFF in this case, such as announcement of candidacy, opening of campaign office, or filing of a campaign spending Organizational Report. The issue of the deadline for resignation was not before the Hawaii Supreme Court in Cobb.

Therefore, this court does not infer that the Hawaii Supreme Court intended to rule on the merits of the issue presented in this case through its orders in the Bornhorst cases, the Blair v. Harris mandamus action, and Cobb.

Under the circumstances, there are no binding judicial decisions specifically addressing the issue presented in this case. Therefore, this court must turn to other principles of constitutional interpretation.

C. APPLICATION OF PRINCIPLES OF CONSTITUTIONAL INTERPRETATION

1. Existence of Ambiguity

Although the Hawaii Supreme Court has not addressed the specific issue presented in this case on the merits, it did specifically address Article II, Section 7 of the Hawaii Constitution on one occasion, in Cobb v. State, 68 Haw. 564 (1986). Cobb addressed whether the resign to run provision applies to elected state and county officials who seek federal office. The Hawaii Supreme Court, in a 3-2 decision, held that it did not.

"When the text of a constitutional provision is not ambiguous, the court, in

construing it, is not at liberty to search for its meaning beyond the instrument." State v. Kahlbaun, 64 Haw. 197, 638 P.2d 309, 314 (1981). In Cobb, the Hawaii Supreme Court found Article II, Section 7 ambiguous on its face with respect to the issue presented in that case, whether or not the resignation requirement applied to a state elected official seeking federal office. Thus, at the outset, the court must address whether Article II, Section 7 is facially ambiguous with respect to the question of when a person becomes "eligible as a candidate." In this case, PLAINTIFF argues that Article II, Section 7 is clear. PLAINTIFF argues that a person is "eligible to be a candidate," at the latest, by the time that person files an Organizational Report with the Campaign Spending Commission as required by Chapter 11 of the Hawaii Revised Statutes. HARRIS filed his Organizational Report on May 15, 2001. PLAINTIFF argues that it belies logic for HARRIS to argue that he is not "eligible as a candidate" for purposes of Article II, Section 7 when he is "eligible to hire a campaign manager, eligible to retain a campaign chairman and vice chairman, eligible to have a campaign bank account, eligible to have a campaign headquarters, eligible to address campaign supporters, is eligible to collect hundreds of thousands of dollars for that campaign and he is 'eligible' to sign his name over the line marked 'candidate' on the Candidate Committee Organizational Report required by state law. . . (.)"

HARRIS, in contrast, argues that Article II, Section 7 is clear in that a person is not "eligible to be a candidate" for purposes of Article II, Section 7 until that person files nomination papers as required by Chapter 12 of the Hawaii Revised Statutes. That deadline has yet to come, and falls on July 23, 2002. In support of his argument, HARRIS notes the following definitions from Black's Law Dictionary:

> **Eligible.** Fit and proper to be chosen; qualified to be elected. Capable of serving, legally qualified to serve. Capable of being chosen, as a candidate

for office. Also, qualified and capable of holding office.

Candidate. One who seeks or offers himself, or is put forward by others, for an office, privilege, or honor. A nominee.

HARRIS argues that "it is readily apparent that the plain meaning of 'being eligible as a candidate for another public office' refers to the filing of nomination papers, rather than registering with the campaign spending commission."

The court finds that Article II, Section 7 is not clear on its face to mean either party's position regarding interpretation. In the court's view, at first blush, the phrase "eligible to be a candidate" appears consistent with PLAINTIFF's interpretation. As argued by HARRIS, however, one of the possible definitions of "eligible" in Black's Law Dictionary is "legally qualified to serve." The court is not aware of any legal requirement for a person running for office to establish "legal qualification to serve" at the time of filing a campaign Organizational Report or at any other time before the filing of nomination papers, at which time a candidate must certify that he or she is legally qualified to serve in the office sought. [8] Therefore, the court finds the phrase "eligible to be a candidate" to be patently ambiguous as between the possible interpretations presented by PLAINTIFF and HARRIS.

2. Intent of the Framers and Voters

Accordingly, the court must turn to other principles of constitutional interpretation.

[8] Section 12-3(6) of the Hawaii Revised Statutes requires "(a) certification by the candidate that the candidate will qualify under the law for the office the candidate is seekin(.)" An example of a legal qualification to serve is Article III, Section 6 of the Hawaii State Constitution, which requires minimum residency requirements for members of the State Legislature.

In Cobb, the Hawaii Supreme Court noted that:

> When resolving ambiguity, we have repeatedly held that the fundamental principle in construing a constitutional provision is to give effect to the intention of the framers and the people adopting it.[9]

(I) Intent of the Framers

The provision that became Article II, Section of the Hawaii State Constitution was proposed by The Constitutional Convention of Hawaii of 1978 ("The Con Con"). The Committee on Bill of Rights, Suffrage and Elections, of The Con Con addressed the "resign to run" provision before it was presented to the Committee of the Whole. Delegate Hale reported on the proposal as follow:

> Arguments in favor of this motion included: (1) representatives have the responsibility to remain in office until their terms end and should not use their present jobs as jumping points for higher positions; (2) this would prevent current bickering between the Mayor and Governor which makes a mockery of those offices; (3) there would be additional costs to the taxpayer if an elected official were elected to another position before his term expired; (4) if the terms do not end at the same time, the person should resign in order to run for another office; and (5) this would encourage people to trust their government.[10]

Standing Committee Report No. 72 of The Committee on Bill of Rights, Suffrage

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[9] 68 Haw. At 565.

[10] Minutes of the 9:17 a.m. meeting of August 27, 1978 of the Committee on Bill of Rights, Suffrage and Elections, from Records of the Standing Committees [Series 220], Constitutional Convention.

and Elections then officially reported on the proposal as follows:

> Your Committee believes it would be justified to require a person to resign from office before becoming eligible to run for another public office with an overlapping term. By running for another office, the person is in effect saying that he no longer wishes to fulfill the responsibilities of the office to which he was elected, and accordingly he should resign from that office. The voters should not be saddled with an elected public official who no longer wishes to fulfill the duties of the office to which he was elected and will do so only if he fails to win election to the other office. This is not fair to the voters, who elected him to serve a full term, and is a violation of the public trust.
>
> Therefore, your Committee present for consideration the following language:
>
> "RESIGNATION FROM PUBLIC OFFICE
>
> "Section . An elected public officer shall resign from that office before being eligible as a candidate for another public office, if the term of the office sought begins before the end of the term of the office held."
>
> Your Committee does not believe it would be warranted for a candidate to resign if the office he is seeking has a concurrent term. In this case, he is in effect resigning since, if he loses the election, he does not have an office to return to. He is not abusing his elected office by using it as a safe haven from which to make political forays and return if he proves unsuccessful.[11]

During the Committee of the Whole Debates of The Con Con of September 11, 1978, various delegates commented on the proposed "resign-to-run" amendment. Those comments are contained on pages 707 through 718 of the Proceedings of the Constitutional Convention of Hawaii of 1978, Volume II, Committee of the Whole Debates. At the time, the Committee of the Whole was discussing proposed Amendment No. 2, which was a proposed amendment to completely delete the "resign to run" proposal. [12]

Before the Committee of the Whole addressed the "resign to run" provision and

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[11] Standing Committee Report No. 72 of The Committee on Bill of Rights, Suffrage and Elections.

[12] Page 699 of the Proceedings of the Constitutional Convention of Hawaii of 1978, Volume II, Committee of the Whole Debates, September 11, 1978.

the proposed amendment to delete the "resign to run" provision in its entirety, Delegate Weatherwax, as Chairman of the Standing Committee on Bill of Rights, Suffrage and Elections, reported to the Committee of the Whole regarding the "resign to run" provision as follows:

> . . . There is a new provision with reference to forced resignations, where any public official who intends to run for an office which happens to overlap his present office would be required to resign. . . .[13]

The following relevant comments were made by delegates that supported the passage of the "resign to run" provision:

> DELEGATE TAMAYORI: . . . When an elected official seeks another office, it is almost impossible for him or her to fulfill the responsibilities of the office currently held. The time requirement for mounting a political campaign alone would tax the energies of even the most durable public official. This is particularly true in the larger races, where voter contact itself is a major undertaking. Deletion of this provision condones this kind of dereliction of responsibility and I urge you to vote against this amendment.
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> ...
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> DELEGATE VILLAVERDE: . . . I feel very strongly, although I cannot put my finger on it and prove the area of abuse in offices of the incumbency when a person seeks higher office. This is a personal gut feeling as far as I'm concerned, but I feel that a person seeking higher office should resign. I hate to be suspicious that he is using the office to seek higher office in the area of administrative staffing, in the area of using governmental time--governmental public time--as well as using public facilities. And I don't like to see that happen, and maybe it is happening. . . I feel that he should, within a period of time, still resign from that particular office so as to give the public at least that feeling of a clean operation, a clean slate--or cleanliness, as you might say--that will not raise doubts in the public's mind, that he is not using public funds, not using public time, if you say that . . ."
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> . . .
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> DELEGATE KOJIMA: . . I speak against this amendment to

[13] Page 701 of the Proceedings of the Constitutional Convention of Hawaii of 1978, Volume II, Committee of the Whole Debates, September 11, 1978.

delete a portion of the committee report. I see no difficulty with the language. When a candidate puts himself up for office, he makes a commitment to that office and for that period of time. In return, the voters vote for the candidate to that office and for that period of time. I feel the candidates then--or the elected officials--should meet their commitment. I do not believe that the political animal should have his cake and eat it too, at the expense of the electorate.

. . .

DELEGATE LES IHARA: . . . I have two reasons I am speaking against the amendment. One is that I feel strongly that a public officer should serve in just one public office and when a public officer announces or is running for another public office, he is in essence asking the people to vote for him and to support that candidate in serving another office, and I think the public officer is playing between two offices.

...

DELEGATE WEATHERWAX: . . .Thank you, Mr. Chairman. Just a few clarifying remarks--hopefully, clarifying and not confusing. I think, with reference to language, there's always some difficulty; we've heard here from individuals who fee that the language is clear and sufficient for them, and in other instances, from perhaps one who is more legalistic-minded, who can foresee all sorts of problems. But this seems to be a conflict we always deal with when we're trying to write something very broad and yet to handle some precise problems. So I would think that the language in and of itself would not be a barrier here, except to look if the language here sufficiently meets the desires of the concept which was voted on in committee--and, as indicated, the votes was something like 22 to 6 in favor of the concept.

. . .

The last thing is that there was some discussion about whether this forced resignation would discourage good candidates. I feel that it would work just the opposite perhaps; and an indication of this would be a state senator who took it upon himself to resign before he ran for a federal office. I think than's an indication of a candidate facing the situation, who makes a choice and realizes that trying to serve two master is a very difficult thing.

The last thing again--the very last thing--would be that we're very concerned with images of candidates, and I think this would aid a candidate when he does in fact resign before seeking another office which would overlap and--well, that would be it.

. . .

> DELEGATE CHING: . . .an amendment such as this would affect 25 senators who may designs on higher office. I have watched some of these senators as they plan for the coming election. In the spring of the year, election year, they are holdover senators and not up for reelection; I have watched some of these people plan to run for a statewide office and, believe me, it really detracts from their being as effective and as good representatives of the people as they should be, because they have designs on another office which encompasses a larger geographic area. Some of them even take trips to the neighbor islands while we're in session, to set up campaign committees and such.
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> As far as the image arguments are concerned, I thin, that this is the real problem; it casts doubt on the deliberations of a body when two or three of the body have announced they plan to seek statewide office. And I think for that reason if nothing else--and it effects 25 senator, 4 mayors, possibly a lieutenant governor who might be seeking another office--I think that this proposal is long time overdue and I think the Convention would be right to put it in the books.

The following relevant comments were made by delegates who supported the proposed amendment to delete the "resign to run" provision, and therefore <u>opposed</u> the provision. These comments are relevant because it illustrates these delegates' understanding of the possible effect of the "resign to run" provision:

> DELEGATE CHONG: . . . To mandate that an elected public official resign from his present office before seeking a higher office is (1) not a constitutional matter--so we shouldn't clutter up the Constitution, it can be dealt with statutorily; (2) denying the voter his or her privilege to elect that person to whichever seat the candidate seeks . . . (.)
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> . . .
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> DELEGATE BURGESS: . . .First, I think the language leaves a lot to be desired in clarity. I would like to ask the members of the delegation to look at the language and read it and try to understand it. I think if you do, it says something very different from what we've heard so far today. It says that any elected official " shall resign from that office before being eligible as a candidate for another public office. . . ." It doesn't say he has to resign only when he files nomination papers, it simply says he has to resign before being eligible. . . .

. . .

> DELEGATE MILLER: Mr. Chairman, I rise to speak in favor of the amendment. Every elected official who runs for election has the potential for abuse of his office. No on expects the incumbent to resign. For example, the governor is spending a great deal of time running this year. The mayor is spending a great deal of time running for governor. This amendment states that one should resign and the other shouldn't. I ask you--is this fair and equitable?
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> . . .

The court is aware that "debates, proceedings and committee reports do not have binding force. . .and [their] persuasive value depends upon the circumstances of each case."[14] Fundamentally however, courts must give effect to the intent of the framers and the voters who adopted the amendment.

All in all, with respect to the intent of the framers, although there was arguably some confusion with respect to the intent and effect of the "resign to run" provision, it appears that the framers understood that the provision would require resignation when an elected official began to seek or run for higher office, not when the elected official officially files nomination papers.

This interpretation of the intent of the framers is appears to be buttressed by their passage of two additional constitutional amendments dealing with elections and candidates, which are also now included in Article II of the Hawaii State Constitution:

> **Section 5.** The legislature shall establish a campaign fund to be used for partial public financing of campaigns for public offices of the State and its political subdivisions, as provided by law. The legislature shall provide a limit on the campaign spending of candidates.
>
> **Section 6.** Limitations on campaign contributions to any political

[14] State v. Kahlbaun, 64 Haw. 197, 204 (1981).

candidate, or authorized political campaign organization for such candidate, for any elective office within the State shall be provided by law.

It does not appear that the framers made any attempt to distinguish between the meaning of "candidate" between the "resign to run" provision, Article II, Section 7, and the campaign spending provisions. Therefore, the framers also arguably intended to classify a person "eligible as a candidate" when the person became a "candidate" for campaign spending purposes.

Thus, the court concludes that the intent of the framers was to require resignation when an elected public officer became a candidate for another public office, if the term of the office sought begins before the end of the term of the office held.

(II) Intent of the Voters

Principals of constitutional interpretation also render it critical to ascertain the intent of the voters who ratified Article II, Section 7. Again, "(w)hen resolving ambiguity, [the Hawaii Supreme Court has] repeatedly held that the fundamental principle in construing a constitutional provision is to give effect to the intention of the framers and the people adopting it.[15]

At the time of the November 1978 general election, voters were provided with a voter information booklet, explaining the purpose of each amendment. The booklet advised the voters of the substance and effect of the proposed amendment. Kahalekai v. Doi, 60 Haw. 324, 343, 590 P.2d 543 (1979). As pointed out by PLAINTIFF, at the front of the instructional booklet, voters were advised:

[15] Cobb, 68 Haw. at 565.

PLEASE READ THIS INFORMATIONAL BOOKLET
IT IS PART OF YOUR OFFICIAL BALLOT

With respect to the "resign to run" provision, the booklet stated:

> If adopted, this amendment:
> -makes any elected public officer who wants to run for another office quit before running for another office if the terms of office are not the same.

Thus, it appears that the voters understood that by passing Article II, Section 7, an elected public officer would be required to resign before "running" for another office, if the term of the office sought begins before the term of the office held.

Therefore, in the court's view, the intent of the framers and the voters was to require a person to resign before "running" for another public office, and not to require resignation at the potentially late stage of filing nomination papers.

3. Words Used In Their Natural Sense

In Cobb, the Hawaii Supreme Court also noted:

> In construing article II, section 7, we are further bound by the settled rule that "[i]n the construction of a constitutional provision . . . the words of the constitution are presumed to be used in their natural sense . . . 'unless the context furnishes some ground to control, qualify or enlarge [them]. . . .[16]

In this regard, the Hawaii Supreme Court case of In Re Application of Pioneer Mill Co., Ltd., 53 Haw. 496, 497 P.2d 549 (1972), is instructive. Pioneer Mill concerned then State Land Court Judge Samuel King's candidacy for Governor, and the Court's interpretation of the 1970 version of Article V, Section 3 of the Hawaii State Constitution, which then provided

[16] Cobb, 68 Haw. at 565.

that "(a)ny justice or judge who shall become a candidate for an elective office shall thereby forfeit his office."

Although, as argued by HARRIS, In Re Pioneer Mill is distinguishable for various reasons, the Hawaii Supreme Court stated:

> We reject the position that a person becomes a candidate only when his formal nomination papers are filed. We think that when the constitutional draftsmen chose the word 'candidate,' they intended the ordinary meaning of the word to apply. We do not believe that our constitution's draftsmen would have used the broad term 'candidate' if they had intended to disqualify a judge only after he has filed his nomination papers.[17]

The Court also noted:

> Our task as judges is not to rewrite the Constitution. Our system of government depends on each branch's recognition of the limitations to its power. The constitutional drafters wrote the Constitution which the people adopted. Our task is to apply the language in particular factual settings. When interpreting ambiguous provisions we attempt to determine the purposes which the provision was designed to achieve. We are always reluctant to decide that the constitutional draftsmen intended to accomplish what appears to be an absurd result. But when we conclude that the constitution's draftsmen intended to use the word candidate in its ordinary meaning, the inquiry stops. We do not go on to decide whether or not the provision is sensible, and we do not, if we feel a provision is unwise, simply indulge in an exacerbated interpretation of a commonly used term.[18]

The Court also cited with approval language from cases from other states construing the meaning of the word "candidate":

> The word 'candidate' in the constitution is to be understood in its ordinary popular meaning, as the people understood it whose votes at the polls gave that instrument the force and effect of organic law. Webster defines the word to mean 'one who seeks or aspires to some office or privilege, or who offers himself for the same.' This is the popular meaning

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[17] In Re Pioneer Mill, 53 Haw. at 499.

[18] Id. at 499-500.

> of the word 'candidate.' It is doubtless the meaning which the members of the constitutional convention attached to it, and the sense in which the people regarded it when they came to vote. We therefore say, in every-day life, that a man is a candidate for an office when he is seeking such office. It is begging the question to say that he is only a candidate after nomination, for many persons have been elected to office who were never nominated at all. We hold, therefore, that the defendant was a candidate for office within the meaning of the constitution . . . (.)[19]

4. The Objectives Of The Amendment

> Another established rule of [constitutional] construction is that a court may look to the object sought to be accomplished and the evils sought to be remedied by the amendment, along with the history of the times and the state of being when the constitutional provision was adopted.[20]

Subsection II(C)(2) above delineates the objects sought to be accomplished and the evils sought to be remedied by Article II, Section 7. It is fairly clear that the framers and voters not only did not want an elected public official to be able to have a "safe haven" office to which to return after defeat,[21] but also sought to prevent an elected official from being distracted from his or her duties due to time requirements for campaigning, to prevent against the appearance of impropriety in the use of existing administrative staff for campaign purposes, to not be torn between conflicting loyalties between the office held and the office sought, and to improve the public image of political candidates, to name a few.[22]

In fact, the State of Hawaii, through its Attorney General, argued at least six justifications for the "resign to run" provision in Fasi v. Cayetano, 752 F.Supp. 942 (D.Haw.

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[19] Id. at 501.

[20] State v. Kahlbaun, 64 Haw. at 202.

[21] See Standing Committee Report No. 72, supra, fn. 10.

[22] See

1990):

> First, the resign-to-run law encourages elected public officials to devote themselves exclusively to the duties of their respective offices. Second, the resign-to-run amendment reduces the possibility of public subsidies for officials merely using public office as a "stepping stone" to higher office. Third, the provision prevents abuse of office before and after an election. Fourth, it protects the expectations of the electorate in voting a candidate into office. Fifth, the resign-to-run amendment ensures loyalty of public servants to their electorate. Finally, the rule minimizes the possibility of disruptions in public office and reduces the need for special elections.

If these were in fact the policy objectives for passage of Article II, Section 7, then it appears that the arguments raised by the State of Hawaii in Fasi v. Cayetano are more supportive of PLAINTIFF's position than HARRIS's position. It appears that the first and second objectives are only served by a requirement that a public official resign immediately at the commencement of his or her campaign for the new office. The fourth, fifth, and sixth objectives are arguably served by both interpretations, but more appear more strongly supported by requiring a candidate to resign upon commencement of his or her candidacy for another office. The third objective is served by both interpretations, but is the only one which seems to be neutral as to whether or not resignation should be required at the commencement of candidacy or upon filing of nomination papers.

Thus, the objectives sought to be accomplished, as posited by the framers, voters, and by the State of Hawaii itself support PLAINTIFF's interpretation of the resignation requirement.

5. Legislative And Administrative Interpretations

Courts can and do look at legislative interpretations of a constitutional

amendment to intepret their intended meaning.[23] As argued by HARRIS, the legislative branch probably agrees with HARRIS that the resignation requirement is triggered by the filing of nomination papers, and not any earlier. In this regard, HARRIS points to the following history.

In 1979, through Act 224, the legislature overhauled the campaign spending statute. One amendment specifically amended Section 11-196 of the the Hawaii Revised Statutes relating to campaign spending Organizational Reports, and newly required that the Report list the office sought, whereas a candidate previously needed only to list the office sought "when known." HARRIS points out that the legislature, in passing Act 224 of 1979, did not express any intent to implement Article II, Section 7. Rather, the legislature fairly clearly was intending to implement the new Article II, Sections 5 and 6 regarding campaign spending.

In addition, in 1980, the legislature amended Chapter 12 of the Hawaii Revised Statutes to add Section 12-3(a)(8) of the Hawaii Revised Statutes, with the specified legislative intent to implement Article II, Section 7:[24]

> **§ 12-3. Nomination Paper; format; limitations.** (a) No candidate's name shall be printed upon any official ballot to be used at any primary, special primary, or special election unless a nomination paper was filed in the candidate's behalf and in the name by which the candidate is commonly known. The nomination paper shall be in a form prescribed and provided by the chief election officer containing substantially the following information:
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> . . .

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[23] State v. Kahlbaun, 64 Haw. at 202.

[24] According to House Standing Committee Report No. 613-80 on H.B. 2167-80, the purpose of Act 264 was "to amend present election laws to conform with constitutional and statutory requirements. . . (,)" and the addition of subsection (8) to H.R.S. Section 12-3 was intended to add "to the nomination paper a certificate that the candidate has complied with the resignation from public office requirement of the Constitution(,)" which is Article II, Section 7.

> (8) A sworn self-subscribing oath, where applicable, by the candidate that the candidate has complied with the provisions of Article II, section 7 of the Constitution of the State of Hawaii.

HARRIS is therefore correct in arguing that the legislature apparently interpreted Article II, Section 7 to require resignation only when a person filed nomination papers, rather than when the person began running for office, or filed a campaign spending Organizational Report. The Hawaii Supreme Court has also stated, however, that:

> A legislative construction implementing a constitutional amendment cannot produce an absurd result or be inconsistent with the purposes and policies of the amendment.[25]

HARRIS's interpretation of the "resign to run" provision probably does not produce an absurd result. The purposes and policies of the amendment, however, support PLAINTIFF's position, as outlined in subsection II(C)(4) above.

In addition, in apparent contravention of HARRIS's argument that the filing of nomination papers governs the definition of candidacy, or eligibility for candidacy, the Hawaii Supreme Court also stated:

> We recognize that HRS § 12-1ff. (Supp. 1971) which deals with the mechanics of filing nomination papers and the printing of ballots, uses the term "candidate" to mean only those who have filed nomination papers. That statute, however, uses the word candidate for its own purposes, that is, the regulation of the mechanics of filing nomination papers. Its use of the word is therefore of little utility in interpreting the broader purpose of the Constitution.

HARRIS also argues correctly that the Office of Elections and the Department of Attorney General have construed the resignation requirement to be triggered by the filing of

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[25] State v. Kahlbaun, 64 Haw. at 206.

nomination papers.[26] With respect to the Office of Elections and Department of Attorney General, in general, in deference to the administrative agency's expertise and experience in its particular field, the courts should not substitute their own judgment for that of the administrative agency where mixed questions of fact and law are presented.[27] An unconstitutional interpretation by an adminsitrative agency is not, however, entitled to deference. In addition, although Attorney General's opinions are highly instructive, they are not binding upon this court.[28]

IV. CONCLUSION

In Cobb, the Hawaii Supreme Court stated:

> It is beyond dispute that every "resign to run" provision carries a disability that impinges to some degree on the right of voters and candidates to choose and be chosen. . . .For this reason, we are extremely reluctant to read into article II, section 7 any resignation requirement that was not clearly intended.[29]

In the court's view, however, for the reasons pointed out above, the framers and voters clearly intended to require resignation of an elected public officer before running for another public office if the term of the office sought begins before the term of the office held.

Moreover, the court notes that "resign to run" provisions have withstood federal constitutional challenges. See Clements v. Fashing, 457 U.S. 957, 102 S.Ct. 2836, 73 L.Ed.2d

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[26] The Office of Elections and Department of Attorney General construe the resignation requirement to be triggered by the filing of nomination papers. See State of Hawaii Office of Elections 2002 Candidates Manual and Attorney General Opinion 86-4.

[27] In Re Water Use Permit Applications,, 94 Hawai'i 97,9 P.3d 409, 466 (2000).

[28] Kepo` o v. Watson,, 87 Hawai'i 91, 952 P.2d 379, 390 (1998).

[29] 68 Haw. at 565.

508 (1982); Joyner v. Mofford, 706 F.2d 1523 (1983); Fasi v. Cayetano, 752 F. Supp. 942 (D.Haw. 1990).

Based on the the analysis above, the court concludes Article II, Section 7 of the Constitution of the State of Hawaii requires HARRIS to have resigned by the time he became eligible as a candidate for the office of Governor of the State of Hawaii. The court agrees with PLAINTIFF that the resignation requirement was triggered at least by the time he filed his gubernatorial Organizational Report on May 15, 2001. The court is aware that construing the time a person becomes "eligible as a candidate" as the time a person begins "running" for office raises the question of when a person actually begins "running" for office; i.e., is it when the person announces his candidacy, when the person opens a campaign office, or when the person files an Organizational Report with the Campaign Spending Commission. See In Re Pioneer Mill, 53 Haw. at 498-99.

In this case, however, PLAINTIFF merely seeks a declaratory ruling that the trigger point is, at minimum, on or before the filing of the Organizational Report. With this position, the court concurs.

The court notes that the Corporation Counsel, on behalf of Defendant Jeremy Harris in his official capacity as Mayor of the City and County of Honolulu, filed a statement of no position with respect to both motions before the court, but requested that should the court deem PLAINTIFF the prevailing party, "that any remedy fashioned should include an acknowledgement by the parties and by the courts that the actions taken by Mayor Harris, in his official capacity as Mayor, and the acts of his appointees, acting as such, since January 2, 2000 to and including any effective date of a final judgment on the issues, are deemed to be valid acts of the City and County of Honolulu."

The court agrees that the de facto officer doctrine applies in this situation. "(O)rdinarily(,) acts of a person who has the reputation and appearance of a public officer are of the same validity as acts of a true office holder(.)" In Re Pioneer Mill, supra, 53 Haw. at 503. Thus, pursuant to the de facto officer doctrine, the court's decision today in no way invalidates any actions taken by Harris, in his official capacity as Mayor, and the acts of his appointees, acting as such, since January 2, 2000 to the date he finally leaves office as Mayor.

ORDER

Pursuant to the facts and law above, the court hereby GRANTS PLAINTIFF's Motion for Summary Judgment and DENIES Defendant HARRIS's Motion for Judgment on the Pleadings, Or, In the Alternative, For Summary Judgment.

Pursuant to the Plaintiff's prayer for declatory relief under Hawaii Revised Statutes Chapter 632, Declaratory Judgment shall enter in favor of Plaintiff Russell Blair and against Defendant Jeremy Harris, in his individual capacity and as Mayor of the City and County of Honolulu, declaring that Harris was required to resign as Mayor when he became eligible as a candidate for the office of Governor of the State of Hawaii on or before the filing of his Organizational report on May 15, 2001.

The Declaratory Judgment shall also include a declaration that pursuant to the de facto officer doctrine, the court's decision in no way invalidates any actions taken by Harris, in his official capacity as Mayor, and the acts of his appointees, acting as such, since January 2, 2000 to the date he finally leaves office as Mayor.

DATED: Honolulu, Hawaii, _____.

_____
Judge of the above-entitled court

NOTICE OF ENTRY

Notice is given of the entry of the above-entitled Order through personal delivery to the undersigned counsel or their respective messengers:

WILLIAM J. DEELEY, ESQ.
DENNIS W. KING, ESQ.
CHARLES R. PRATHER, ESQ.
Deeley, King & Pang
810 Richards St., Ste. 810
Honolulu, HI 96813
ATTORNEYS FOR PLAINTIFF RUSSELL BLAIR

ROBERT G. KLEIN, ESQ.
PETER J. HAMASAKI, ESQ.
McCorriston Miller Mukai MacKinnon LLP
500 Ala Moana Blvd.
Five Waterfront Plaza, 4th Fl.
Honolulu, HI 96813
ATTORNEYS FOR DEFENDANT JEREMY HARRIS, in his Individual Capacity

DAVID Z. ARAKAWA, ESQ.

Corporation Counsel
JANE H. HOWELL, ESQ.
DIANE KAWAUCHI, ESQ.
Deputy Corporation Counsel
530 S. King St., Rm. 110
City and County of Honolulu
Honolulu, HI 96813
ATTORNEYS FOR DEFENDANT JEREMY HARRIS, in his
Office Capacity as Mayor

DATED: Honolulu, Hawaii, _____.

_____
Clerk of the above-entitled court